## JUDICIAL COUNCIL OF THE TENTH CIRCUIT

IN RE: COMPLAINT UNDER THE JUDICIAL CONDUCT AND DISABILITY ACT

Nos. 10-12-90021 through 10-12-90024

Before **BRISCOE**, Chief Judge.

## ORDER

Complainant has filed a complaint of judicial misconduct against three circuit judges and one district judge in this circuit. My consideration of this complaint is governed by 1) the misconduct rules issued by the Judicial Conference of the United States, entitled *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (the "Misconduct Rules"); 2) the federal statute dealing with judicial misconduct, 28 U.S.C. § 351 et seq., and 3) the "Breyer Report," a study by the Judicial Conduct and Disability Act Study Committee, headed by Supreme Court Justice Stephen Breyer, entitled *Implementation of the Judicial Conduct and Disability Act of 1980*. The Breyer Report may be found at: http://www.supremecourt.gov/publicinfo/breyercommitteereport.pdf. To the extent that there are any relevant prior decisions of the full Judicial Council of this circuit which are consistent with those authorities, they may also govern my consideration of this complaint.

Complainant has been provided with a copy of the Misconduct Rules, and the Rules are also accessible on the Tenth Circuit's web page at: http://www.ca10.uscourts.gov/misconduct.php. In accord with those rules, the names of the complainant and subject judges shall not be disclosed in this order. *See* Misconduct Rule 11(g)(2).

Complainant takes issue with the decisions of the district court judge in connection with complainant's sentencing following conviction on drug charges. Complainant also takes issue with the appellate decision, rendered by the three subject circuit judges, affirming the district court's judgment. Complainant argues that both courts exceeded their authority because the factual basis for the sentencing was not specifically found. These arguments are not cognizable as misconduct claims because they are "directly related to the merits of a decision or procedural ruling." Misconduct Rule 11(c)(1)(B). As explained in the Breyer Report, this exclusion of matters related to the merits of underlying cases protects the independence of the judges deciding those cases. *See* Breyer Report, App. E.,

Accordingly, this complaint is dismissed pursuant to Misconduct Rule 11(c). The Circuit Executive is directed to transmit this order to complainant and copies to the subject judges and the Judicial Conference Committee on Judicial Conduct and Disability. *See* Misconduct Rule 11(g)(2). To seek review of this order, complainant must file a petition for review by the Judicial Council. The

requirements for filing a petition for review are set out in Misconduct Rule 18(b). The petition must be filed with the Office of the Circuit Executive within 35 days of the date of the letter transmitting this order. *Id*.

So ordered this 24th day of October, 2012.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe Chief Circuit Judge